IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH.

CWP Nos.9270, 9348, 9626, 9899, 9951 & 10253 of 2007
Date of decision:07.08.2007

Vaish College of Education, Rohtak

-----Petitioner

Vs.

State of Haryana and others.

-----Respondents

AND

Maha Prabhu Ram Mulkh Hi-Tech Education Society.

-----Petitioner

Vs.

State of Haryana and others.

-----Respondents

AND

Uday Bharti Education Society.

-----Petitioner

Vs.

State of Haryana and others.

-----Respondents

AND

Saint Tara Chand Memorial Education Society.

-----Petitioner

Vs.

State of Haryana and others.

-----Respondents

AND

Bharat Educational and Social Welfare Society.

-----Petitioner

Vs.

State of Haryana and others.

-----Respondents

AND

Lord Krishna Jan Kalyan AVM Siksha Samiti

-----Petitioner

Vs.

State of Haryana and others.

-----Respondents

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE AJAI LAMBA

Present: Mr. Rajiv Atma Ram, Sr. Advocate with
Mr. Tarun Walia, Advocate (In CWP No.9626 of 2007)
Mr. Akshay Bhan, Advocate (In CWP No.9270 of 2007)
Mr. Vijay Sharma, Advocate (In CWP Nos. 9348, 9899 & 9951 of 2007)
Mr. Gunjan Mehta, Advocate (In CWP No.10253 of 2007)
for the petitioners.

Mr. D.S. Nalwa, Addl. A.G., Haryana.

Mr. Vinod S. Bhardwaj, Advocate
for respondent No.4/NCTE.

Adarsh Kumar Goel, J.

This petition will dispose of C.W.P. Nos. 9270, 9348, 9626, 9899, 9951 & 10253 of 2007 as common question of law of right to affiliation after grant of recognition and right to admit students in absence of any regulation or policy of the State, are involved.

Facts:

In C.W.P. No.9270 of 2007, case set out by the petitioner is that the college was granted recognition for the Diploma in Education (D.Ed.), two years' course with annual intake of 50 seats from the

academic year 1998-99 vide order dated 25.2.1999, Annexure P-1, of the National Council for Teacher Education ("NCTE") under Section 14 (3)(a) of National Council for Teacher Education Act, 1993 ("NCTE Act"). The NCTE allowed conditional recognition for additional intake of 50 students for the D.Ed. course vide letter dated 27.8.2006, Annexure P-2 read with order dated 19.9.2006, Annexure P-5. The petitioner informed the Haryana State Council of Education Research and Training (for short, "the HSCERT"), respondent No.2, about the additional intake vide letter dated 26.2.2007, Annexure P-6. Still, the respondent No.3, Directorate of School Education in the prospectus for admission, issued in March 2007 for the academic session 2006-08, mentioned the figure of 50 students against the petitioner-college. Counselling was held in May 2007. The petitioner-college was entitled to admit 50 additional students for the academic session 2007-09 and no admissions having been done for additional intake seats, had no objection to give admission to those who were in the waiting list, for admission after having passed the entrance test conducted by the State of Haryana in pursuance of prospectus issued in March, 2007, Annexure P-7. Prayer was made that the prospectus be directed to be corrected and 50 additional seats available for the petitioner-college be filled up.

In the reply filed, stand taken by the Board of School Education, Haryana is that it is acting on the instructions of Director, Elementary Education, Haryana, Chandigarh. No reply has been filed by the HSCERT or by the NCTE. However, as reflected in the order of

this Court dated 14.6.2007, statement was made on behalf of respondents No.1 and 2 (State of Haryana and the HSCERT) that counselling for admission to D.Ed. course had already been accomplished between 15.5.2007 to 26.5.2007 and the Government had decided not to arrange any further counselling for the course. In the reply filed by the State of Haryana, it has been stated that as per the prospectus, intake of the petitioner-institute was shown to be 50 seats and admission against the said 50 seats were made and the State decided not to arrange any further counselling since admissions for additional intake of 50 seats beyond the date of counselling could not be made during the session 2006-08. Admissions against the additional seats will be made during the next session as and when it takes place.

In C.W.P. 9348 of 2007, case of the petitioner is that it is running B.Ed. College and is affiliated to the Kurukshetra University. It applied for recognition for D.Ed. course, for which, recognition was granted vide letter dated 3.6.2007, Annexure P-11 read with letter dated 9.6.2007, Annexure P-13 with intake of 50 students. It applied for inclusion in the list of eligible colleges for D.Ed. course in the prospectus which had already been issued, but the petitioner was not included in the eligibility for admitting the students.

Contention raised in the petition is that this Court vide order dated 22.11.2005 in C.W.P. No.17964 of 2005 (***Bhawani Shankar Charitable Trust (Regd.) & Anr. v. State of Haryana***) had given a

direction to provisionally consider the institute, in that case, for inclusion in the process of counselling, while adjourning the case for filing the written statement. It is further pointed out that vide order dated 16.5.2006, another petition was admitted and interim order continued.

In the reply filed on behalf of the State of Haryana it has been stated that the State government had not issued any permission/NOC for the current year for starting the D.Ed. course and grant of recognition in the month of June, 2007, did not confer any right for inclusion in the prospectus for admission issued in March 2007, according to which, admission process was conducted between 15.5.2007 to 26.5.2007. There were already 28 institutions with 3800 candidates passing out every year. The department did not want large supply of D.Ed. qualified persons with no chances of employment.

In C.W.P. No.9626 of 2007, case of the petitioner is that the Society was running B.Ed. course and also applied for D.Ed. course with 50 seats, for which, recognition was granted vide order dated 26.6.2007, Annexure P-9 under the provisions of the NCTE Act and Regulations and once recognition was granted, the State body – the HSCERT was under an obligation to grant affiliation and that though 80,000 students had passed the entrance examination for D.Ed. course, only the candidates upto 3200 ranks were offered seats and thus, large number of students willing to take admissions were available, but they were not being admitted to the petitioner-college,

contrary to the policy of having two counsellings for self-financing professional colleges.

The petitioner also relied upon guidelines of the State Government purporting to lay down State policy in pursuance to judgment of the Hon'ble Supreme Court in ***T.M.A. Pai Foundation*** v. ***State of Karnataka*** AIR 2003 SC 355, laying down that seats in the professional colleges will be filled up through entrance test by an agency to be nominated by the State government in accordance with the conditions laid down in the said policy. Two counselling for self-financing professional colleges will be held and any seat remaining vacant, thereafter, will be filled up by the college, as per the guidelines issued "shortly".

Reference has been made to judgment of this Court (***Mange Ram Educational & Charitable Trust (Regd.)*** **v.** ***State of Haryana and another)*** 2007(4) SLR 145, wherein following the judgment of the Hon'ble Supreme Court in ***State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya & Ors.*** 2006 (9) SCC1, it was held that recognition having been granted, grant of affiliation by the affiliating body was mandatory and no approval of the State Government was required, as held by the Hon'ble Supreme Court in ***Jaya Gokul Educational Trust. V. The Commissioner and Secretary to Government Higher Education Department, Thiruvananthapuram and another*** 2000(5) SCC 231. Accordingly, directions were issued to grant affiliation and college was held entitled

to commence the process of admissions for the academic session 2006-07 for admitting the students to D.Ed. course. Reliance has also been placed on order of this Court dated 22.11.2005 in CWP 17964 of 2005 (***Bhawani Shankar Charitable Trust (Regd.) & Anr.* v. *State of Haryana*** which was further followed in CWP No.18620 of 2005.

No separate reply has been filed on behalf of respondents though learned counsel for the State submitted that there was no obligation to hold any entrance test merely by virtue of grant of recognition. It was not obligatory to grant affiliation, their being more colleges than required. It was submitted that as per the tentative policy contemplated, examination is to be held between March 01 to March 20 and admissions are to be held in the month of May and thus, admissions cannot be allowed after the month of May in any year. The petitioner-institute having been granted recognition in June, could not be considered for admissions for the current academic session.

In C.W.P. No.9899 of 2007, case of the petitioner-institute is that it is running B.Ed. course and has also been granted recognition for running B.Ed. course with intake of 100 students, vide letter dated 27.8.2006, Annexure P-7 read with order dated 4.7.2007, Annexure P-9. On 4.7.2007, the petitioner applied for starting D.Ed. course, but the same was not allowed. In April-May, 2007, admissions took place, but the petitioner-institute could not participate for want of recognition.

In CWP No.9951 of 2007, case of the petitioner-institute is that it got recognition for running B.Ed. course on 28.5.2003 and for D.Ed. course with intake of 50 seats vide letter dated 9.9.2006, Annexure P-8. They applied for commencing the D.Ed. course. A written test for D.Ed. course was conducted by the State in April/May, 2007, but name of the petitioner-college was not included.

In C.W.P. No.10253 of 2007, facts stated are that the petitioner-society established its institution for conducting the D.Ed. course and recognition was granted on 4.7.2007 by the NCTE. The petitioner applied for being included in the list of eligible institutions for admission of students, but no reply was received.

In C.W.P. Nos. 9899, 9951 and 10253 of 2207, the State has adopted the reply already filed and the issue being common, adopted the same arguments for the said cases as has already been mentioned hereinabove in respect of C.W.P. Nos.9270, 9348 and 9626 of 2007. No reply has been filed on behalf of NCTE even in C.W.P. No.9270 though counsel for the said respondent has put in appearance in the said case. We have heard him on the issue raised in the petitions, the issue being common.

Rival Contentions:-

On 18.7.2007, we had partly heard the arguments in C.W.P. No.9626 of 2007 and adjourned the matter at the request of learned counsel for the State to enable a decision to be taken about the issue

of affiliation and also to enable learned counsel for the State to take instructions with regard to the manner of admissions. In the said order, we have noted the contentions raised on behalf of the petitioner that it was mandatory on the part of the examining body - the HSCERT to grant affiliation after recognition has been granted as held in judgment of the Hon'ble Supreme Court in ***Sant Dnyaneshwar*** (*supra)* and judgment of this Court in ***Mange Ram*** (*supra).* The institute being recognised and an unaided institution, had right to make admissions subject to non-commercialisation, transparency and merit, which could be regulated by the State as per observations of the Hon'ble Supreme Court in **T.M.A. Pai** (*supra)*, ***Islamic Academy of Education and another v. State of Karnataka and others*** AIR 2003 SC 3724 and ***P.A. Inamdar and others v. State of Maharashtra and others*** AIr 2005 SC 3226.

Learned counsel for the State submitted that in view of law laid down by the Hon'ble Supreme Court in ***Govt. of A.P. & Anr. v. J.B. Educational Society & Anr.*** (2005) 2 SCT 102 and ***Vidharbha Sikshan Vyawasthapak Mahasangh v. State of Maharashtra and others*** AIR 1987 SC 135, the State was not bound to grant affiliation , if there were number of institutions already in existence so that number of educated unemployed does not go up. It was also submitted that the State had the obligation to include only such institutions as have been granted affiliation much prior to issuance of prospectus and prospectus having been published in the first week of March and having been given for printing few days earlier, none of the institutions was liable to be

included as eligible for admissions for the students who passed the entrance test. The entrance test having been conducted during May, the course had to commence in June, the petitioners could also not make admissions either prior to filing of petitions or even after or even now. It was submitted that now it was too late to commence admissions as process of admissions will take time and it will not be possible for the students to complete the studies so as to be eligible to appear in examination, which was proposed to be held in March, 2008. He has placed reliance on judgment of a Single Bench of this Court in ***Shri Vaishno Devi Shiksha Samity and others*** ***v.*** ***State of Haryana and others*** (CWP No.20656 of 2006) dated 12.7.2007 to the effect that mere affiliation did not confer right of admission.

Questions involved:-

After perusing the pleadings and hearing counsel for the parties, we are of the view that following issues arise for consideration:-

(i) Whether grant of affiliation follows as a matter of course after grant of recognition?

(ii) Whether in absence of any regulation by the State, the institutions could themselves conduct admissions subject to non-commercialisation, merit and transparency and complying with any legal and relevant instruction on the subject?

(iii) Whether the State is bound to conduct entrance test for all the institutions which are granted recognition irrespective of date on which recognition is granted or irrespective of the date on which entrance test, if any, is scheduled?

Re. Question (i):-

In view of law settled by the Hon'ble Supreme Court in ***Sant Dnyaneshwar*** (*supra)*, following which a Division Bench of this Court rendered its judgment in ***Mange Ram*** (*supra)*, we are of the view that the issue is concluded in favour of the petitioners and it has to be held that grant of affiliation automatically follows on grant of recognition by the NCTE. Reference may be made to observations of the Hon'ble Supreme Court in ***Sant Dnyaneshwar*** (*supra)*:-

> "80.....As per the scheme of the Act, once recognition has been granted by NCTE under Section 14(6) of the Act, every university ("examining body") is obliged to grant affiliation to such institution and Sections 82 and 83 of the University Act do not apply to such cases."

The petitioners are, thus, entitled to grant of affiliation.

Re. Question No.(ii):

Right of admission of unaided recognised institutions has been gone into in judgments of the Hon'ble Supreme Court in ***T.M.A. Pai Foundation*** (*supra)*, ***Islamic Academy*** (*supra)* and finally in ***P.A. Inamdar*** (*supra)*. In ***P.A. Inamdar*** (*supra)*, it has been held as under:-

"Q.2.**Admission procedure of unaided educational institutions.**

130. So far as the minority unaided institutions are concerned to admit students being one of the components of "right to establish and administer an institution", the State cannot interfere therewith. Upto the level of undergraduate education, the minority unaided educational institutions enjoy total freedom.

131. However, different considerations would apply for graduate and post-graduate level of education, as also for technical and professional educational institutions. Such education cannot be imparted by any institution unless recognized by or affiliated with any competent authority created by law, such as a University, Board, Central or State Government or the like. Excellence in education and maintenance of high standards at this level are a must. To fulfill these objectives, the State can and rather must, in national interest, step in. The education, knowledge and learning at this level possessed by individuals collectively constitutes national wealth.

132. Pai Foundation has already held that the minority status of educational institutions is to be determined by treating the States as units. Students of that community residing in other States where they are not in minority, shall not be considered to be minority in that particular State and hence their admission would be at par with other non-minority students of that State. Such admissions will be only to a limited extent that is like a 'sprinkling' of such admissions, the term we have used earlier borrowing from Kerala Education Bill, 1957. In

minority educational institutions, aided or unaided, admissions shall be at the State level. Transparency and merit shall have to be assured.

133. Whether minority or non-minority institutions, there may be more than one similarly situated institutions imparting education in any one discipline, in any State. The same aspirant seeking admission to take education in any one discipline of education shall have to purchase admission forms from several institutions and appear at several admission tests conducted at different places on same or different dates and there may be a clash of dates. If the same candidate is required to appear in several tests, he would be subjected to unnecessary and avoidable expenditure and inconvenience. There is nothing wrong in an entrance test being held for one group of institutions imparting same or similar education. Such institutions situated in one State or in more than one State may join together and hold a common entrance test or the State may itself or through an agency arrange for holding of such test. Out of such common merit list the successful candidates can be identified and chosen for being allotted to different institutions depending on the courses of study offered, the number of seats, the kind of minority to which the institution belongs and other relevant factors. Such an agency conducting Common Entrance Test (CET, for short) must be one enjoying utmost credibility and expertise in the matter. This would better ensure the fulfillment of twin objects of transparency and merit. CET is necessary in the interest of achieving the said objectives and also for saving the student community from harassment and exploitation. Holding of such common entrance test followed by

centralized counseling or, in other words, single window system regulating admissions does not cause any dent in the right of minority unaided educational institutions to admit students of their choice. Such choice can be exercised from out of list of successful candidates prepared at the CET without altering the order of merit inter se of the students so chosen.

134. Pai Foundation has held that minority unaided institutions can legitimately claim unfettered fundamental right to choose the students to be allowed admissions and the procedure there for subject to its being fair, transparent and non- exploitative. The same principle applies to non-minority unaided institutions. There may be a single institution imparting a particular type of education which is not being imparted by any other institution and having its own admission procedure fulfilling the test of being fair, transparent and non-exploitative. All institutions imparting same or similar professional education can join together for holding a common entrance test satisfying the abovesaid triple tests. The State can also provide a procedure of holding a common entrance test in the interest of securing fair and merit-based admissions and preventing mal-administration. The admission procedure so adopted by private institution or group of institutions, if it fails to satisfy all or any of the triple tests, indicated hereinabove, can be taken over by the State substituting its own procedure. The second question is answered accordingly.

135. It needs to be specifically stated that having regard to the larger interest and welfare of the student community to promote merit, achieve excellence and

> curb mal-practices, it would be permissible to regulate admissions by providing a centralized and single window procedure. Such a procedure, to a large extent, can secure grant of merit based admissions on a transparent basis. Till regulations are framed, the admission committees can oversee admissions so as to ensure that merit is not the casualty."

In view of above, though the State has right to regulate by providing a centralized and single window procedure, but if the State does not do so, the private institutions can jointly hold a Common Entrance Test satisfying the test of non-commercialisation, merit and transparency and in absence of any regulatory measure, even a single institution can hold such a test. Right of the State to regulate does not include right to prohibit private institutions from themselves holding admissions, subject to the triple tests mentioned above, if the State does not propose to provide a centralised procedure. Thus, the State is bound either to provide a procedure for holding a single entrance test or to permit private institutions to themselves collectively or individually hold entrance test for admissions subject to non-commercialisation, merit and transparency.

Re. Question No.(iii):

Even though there is right to make admissions, the same must apart from being based on non-commercialisation, merit and transparency, comply with the requirement of courses being completed before the examination. Thus, admissions cannot be given

in the mid session or in such a way as not to complete the course. This aspect has been gone into in ***Sharwan Kumar etc.*** *v.* ***Director General, Health Services and another*** AIR 1994 SC 1448 and ***Supreet Batra and others*** *v.* ***Union of India and others*** AIR 2003 SC 1084. To overcome this, the Hon'ble Supreme Court has held that a schedule must be laid down fixing duration of the course, date of commencement of course, last date of admission. Reference may be made to judgment of the Hon'ble Supreme Court in ***Medical Council of India*** *v.* ***Madhu Singh and others*** AIR 2002 SC 3230 and ***Mridul Dhar (minor) and another*** *v.* ***Union of India and others*** (2005) 2 SCC 65. In absence of any such schedule being laid down, the State is bound to conduct entrance test in such a way that infrastructure of a recognised institution is not wasted.

Conclusion:

In the present case, the petitioners have been granted recognition. The institution in CWP No.9270 of 2007 was granted recognition on 19.9.2006 and the said institution approached respondent No.2 on 26.2.2007, but was not included in the prospectus. There was no difficulty in issuing corrigendum and including such an institution in the prospectus. There was also no difficulty in conducting admissions for other institutions which were recognised in June/July with a view to utilise their infrastructure. The State could have either itself conducted the admissions when large number of students, who had passed the entrance test, were available or allowed the petitioners

to hold their own admissions. There is no justification for delay in taking a decision on the issue of affiliation as well for not having conducting or permitted the admissions. So far, no time schedule having been laid down, there being sufficient time available from June 2007 upto the date of holding of examination, the State is liable to either conduct admissions or allow the petitioners to do so lest the infrastructure of the petitioners is wasted without any fault on their part. The NCTE itself should also have laid down a policy in the matter. To this extent, the NCTE has also failed to perform its duties.

For the above reasons, we allow these petitions and direct as under:-

(i) The NCTE and the State must lay down clear policy about the time schedule specifying the duration of the course, date of commencement of the course and the last date for admissions within three months from the date of receipt of a copy of this order.

(ii) Respondent No.2 is directed to grant affiliation to the petitioners.

(iii) The State is directed to either conduct admissions for the petitioners or permit them to make their own admissions subject to appropriate conditions, so that infrastructure set up by the petitioners, which has been duly recognised by the NCTE, is not wasted for this year.

The writ petitions are disposed of accordingly.

(ADARSH KUMAR GOEL)

JUDGE

August 07, 2007 **(AJAI LAMBA)**
ashwani **JUDGE**